



**BUSINESS OF THE CITY COUNCIL
AGENDA STATEMENT**

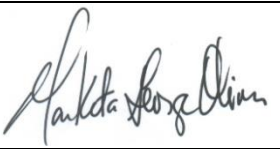
Item No. 13
For Meeting of 3.06.2014

ITEM TITLE: Consideration of a Resolution approving a revised Development Agreement with O'Leary.

CONTACT PERSON(S): Marketa Oliver, City Manager
Josh Heggen, Community Development Agreement

SUMMARY EXPLANATION

The following resolution updates the O'Leary Funeral Home development agreement to update the agreements' dates. Originally, the developer/owner was hoping to be open by January 1, 2014 but delays with contractors and the Federal Government shutdown, which delayed the SBA loan, have caused the project to be behind schedule. This update simply pushes back the minimum assessment and the TIF rebates by one year over what was originally approved.

<input checked="" type="checkbox"/> Resolution _____ Ordinance ____ Contract _____ Other (Specify) _____	
Funding Source: _____	
APPROVED FOR SUBMITTAL _____	
	City Manager

STAFF RECOMMENDATION: Approve the Resolution

AMEND DEVELOPMENT AGREEMENT

(O&A Enterprise, LLC)

443891-26

Norwalk, Iowa

March 6, 2014

A meeting of the City Council of the City of Norwalk, Iowa, was held at _____ o'clock ____m., on March 6, 2014, at the _____, Norwalk, Iowa, pursuant to the rules of the Council.

The Mayor presided and the roll was called, showing members present and absent as follows:

Present: _____

Absent: _____.

Council Member _____ introduced the resolution next hereinafter set out and moved its adoption, seconded by Council Member _____; and after due consideration thereof by the Council, the Mayor put the question upon the adoption of said resolution, and the roll being called, the following named Council Members voted:

Ayes: _____

Nays: _____.

Whereupon, the Mayor declared said resolution duly adopted, as follows:

RESOLUTION _____

Resolution Amending Development Agreement with O&A Enterprise, LLC

WHEREAS, the City Council (the "Council") of the City of Norwalk, Iowa (the "City"), pursuant to and in strict compliance with all laws applicable to the City, and in particular the provisions of Chapter 403 of the Code of Iowa, has adopted an Urban Renewal Plan for the Norwalk Urban Renewal Area (the "Urban Renewal Area"); and

WHEREAS, this Council has adopted an ordinance providing for the division of taxes levied on taxable property in the Urban Renewal Area pursuant to Section 403.19 of the Code of Iowa and establishing the fund referred to in Subsection 2 of Section 403.19 of the Code of Iowa, which fund and the portion of taxes referred to in that subsection may be irrevocably pledged by the City for the payment of the principal and interest on indebtedness incurred under the authority of Section 403.9 of the Code of Iowa to finance or refinance in whole or in part projects in the Urban Renewal Area; and

WHEREAS, a certain development agreement (the "Agreement") between the City and O&A Enterprise, LLC (the "Developer") has been prepared in connection with the development of a new mortuary and floral shop; and

WHEREAS, under the Agreement, the City would provide annual appropriation tax increment payments to the Developer in a total amount not exceeding \$50,000; and

WHEREAS, this City Council, pursuant to Section 403.9 of the Code of Iowa, has published notice, has held a public hearing on the Agreement on, and has otherwise complied with statutory requirements for the approval of the Agreement and has adopted Resolution No. _____ on March 7, 2013 authorizing the execution of the Agreement; and

WHEREAS, the City and the Developer now deem it advisable to amend the Agreement to make modifications to the timing of certain obligations thereunder;

NOW, THEREFORE, It Is Resolved by the City Council of the City of Norwalk, Iowa, as follows:

.....
Section 1. The Agreement is hereby amended to match the form (the "Amended Agreement") presented to this City Council as Exhibit A to this Resolution. The Mayor and City Clerk are hereby authorized and directed to execute and deliver the Amended Agreement on behalf of the City.
.....

Section 2. After its adoption, a copy of this amending resolution and the Amended Agreement shall be filed in the offices of the County Auditor of Warren County as an accompaniment to Resolution No. ____.

Section 3. All resolutions or parts thereof in conflict herewith are hereby repealed.

Passed and approved this March 6, 2014.

Mayor

Attest:

City Clerk

• • • • •

On motion and vote the meeting adjourned.

Mayor

Attest:

City Clerk

AMENDED DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is entered into between the City of Norwalk, Iowa (the “City”) and O&A Enterprise, LLC (the “Developer”) as of the ____ day of _____, 2014 (the “Commencement Date”).

WHEREAS, the City has established the Norwalk Urban Renewal Area (the “Urban Renewal Area”), and has adopted a tax increment ordinance for the Urban Renewal Area; and

WHEREAS, the Developer owns certain real property, as described on Exhibit A hereto, (the “Property”) situated in the Urban Renewal Area and has undertaken the development of a new mortuary and floral shop thereon (the “Project”); and

WHEREAS, the Developer has requested that the City provide financial assistance in the form of incremental property tax payments and tax abatement on the additional value to be used by the Developer in defraying the costs of acquiring the Property and constructing and maintaining the Project; and

WHEREAS, the City and the Developer entered into a certain Development Agreement dated _____, 2013 (the “Original Agreement”) to set forth the mutual understanding of the parties with respect to the Project and the incremental property tax payments in an amount not to exceed \$50,000 to be made to the Developer in connection therewith; and

WHEREAS, the City and the Developer have now agreed to adopt this amended development agreement (the “Agreement”) to update the First Valuation Date (as hereinafter defined) from January 1, 2014 to January 1, 2015 and to make necessary changes relative to such change in the First Valuation Date; and

WHEREAS, this Agreement will replace the Original Agreement; and

WHEREAS, Chapter 15A of the Code of Iowa authorizes cities to provide grants, loans, guarantees, tax incentives and other financial assistance to or for the benefit of private persons;

NOW THEREFORE, the parties hereto agree as follows:

A. Developer’s Covenants

1. Project. The Company agrees to construct the Project on the Property and to use the Project as part of its business operations throughout the Term, as hereinafter defined, of this Agreement.

2. Property Taxes. The Developer agrees to ensure timely payment of all property taxes as they come due with respect to the Property throughout the Term, as hereinafter defined.

3. Minimum Assessment Agreement. The Developer agrees to enter into an assessment agreement (the “Assessment Agreement”), pursuant to Section 403.6 of the Code of Iowa fixing the minimum assessed valuation of the Property, in contemplation of the value to be added by the proposed Project, at not less than \$750,000 (the “Minimum Assessed Value”) as of January 1, 2015 (the “First Valuation Date”). It is intended by the Developer that the Minimum

Assessed Value shall go on the Warren County property tax rolls as of the First Valuation Date regardless of the then-current degree of completion or incompleteness of the Project. The Assessment Agreement shall remain in effect until the expiration of the Term.

4. Property Tax Payment Certification. The Developer agrees to certify on to the City by no later than November 1 of each year, commencing November 1, 2015, an amount (the "Company's Estimate") equal to the estimated Incremental Property Tax Revenues anticipated to be paid in the fiscal year immediately following such certification with respect to the taxable valuation of the Property factored by the Annual Percentage scheduled to be in effect for such fiscal year, as hereinafter set forth. The City reserves the right to review and request revisions to each such Company's Estimate to ensure the accuracy of the figures submitted. For purposes of this Agreement, Incremental Property Tax Revenues are produced by multiplying the consolidated property tax levy (city, county, school, etc.) times the incremental valuation of the Property, then subtracting debt service levies of all taxing jurisdictions, subtracting the school district instructional support and physical plant and equipment levies and subtracting any other levies which may be exempted from such calculation by action of the Iowa General Assembly.

For the fiscal year beginning July 1, 2016 the Annual Percentage shall be 75%;

For the fiscal year beginning July 1, 2017 the Annual Percentage shall be 60%;

For the fiscal year beginning July 1, 2018 the Annual Percentage shall be 45%;

For the fiscal year beginning July 1, 2019 the Annual Percentage shall be 30%;

For the fiscal year beginning July 1, 2020 the Annual Percentage shall be 15%.

Upon request, the City staff shall provide reasonable assistance to the Developer in formulating the annual estimates required under this Section A.4.

5. Legal and Administrative Costs. The Developer hereby acknowledges that the City will cover the initial payment of legal fees and administrative costs (the "Actual Admin Costs") incurred by the City in connection with the drafting, negotiation and authorization of this Agreement, including the necessary amendment to the Urban Renewal Area. Furthermore, the Developer agrees that the City shall withhold an amount (the "Admin Withholding Amount") equal to the lesser of (1) \$5,000 or (2) the Actual Admin Costs from the initial Payments, as hereinafter set forth in order to recover some or all of the Actual Admin Costs.

B. City's Obligations

1. Payments. In recognition of the Developer's obligations set out above, the City agrees to make five (5) annual economic development tax increment payments (the "Payments") to the Developer in each fiscal year during the term of this Agreement, pursuant to Chapters 15A and 403 of the Code of Iowa, provided however that the aggregate, total amount of the Payments shall not exceed \$50,000, and all Payments under this Agreement shall be subject to annual appropriation by the City Council, as provided hereunder.

The Payments shall not constitute general obligations of the City, but shall be made solely and only from Incremental Property Tax Revenues received by the City from the Warren County Treasurer which are attributable to the Urban Renewal Area.

Prior to funding any Payments under this Agreement, the City will first withhold from the Incremental Property Tax Revenues an amount equal to the Admin Withholding Amount. Once an amount equal to the Admin Withholding Amount has been withheld by the City, the Payments shall be made as hereinafter set forth.

The Payments will be made on June 1 of each fiscal year, beginning on June 1, 2017 and continuing to, and including, June 1, 2021, or until such earlier date upon which total Payments equal to \$50,000 have been made.

2. Annual Appropriation. Each Payment shall be subject to annual appropriation by the City Council. Prior to December 1 of each year during the term of this Agreement, the City Council of the City shall consider the question of obligating for appropriation to the funding of the Payments due in the following fiscal year, an amount of Incremental Property Tax Revenues to be collected in the following fiscal year equal to or less than the most recently submitted Developer's Estimate (the "Appropriated Amount").

In any given fiscal year, if the City Council determines to not obligate the then-considered Appropriated Amount, then the City will be under no obligation to fund the Payments scheduled to become due in the following fiscal year, and the Developer will have no rights whatsoever to compel the City to make such Payments or to seek damages relative thereto or to compel the funding of such Payments in future fiscal years. A determination by the City Council to not obligate funds for any particular fiscal year's Payments shall not render this Agreement null and void, and the Developer shall make the next succeeding submission of the Developer's Estimate as called for in Section A.4 above.

3. Payment Amounts. Each Payment shall be in an amount equal to the most recently determined Appropriated Amount. To the extent that Incremental Property Tax Revenues are not received by the City, no Payments shall be made under this Agreement.

4. Certification of Payment Obligation. In any given fiscal year, if the City Council determines to obligate the then-considered Appropriated Amount, as set forth in Section B.2 above, then the City Clerk will certify by December 1 of each such year to the Warren County Auditor an amount equal to the most recently obligated Appropriated Amount.

C. Administrative Provisions

1. Assignment. This Agreement may not be amended or assigned by either party without the prior written consent of the other party. However, the City hereby gives its permission that the Developer's rights to receive the Payments hereunder may be assigned by the Developer to any "affiliate" or a private lender, as security on a credit facility taken in connection with the acquisition of the Property and/or the construction of the Project, without further action on the part of the City.

2. Successors. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

3. **Term.** The term (the “Term”) of this Agreement shall commence on the Commencement Date and end on the date on which the last Payment is made by the City to the Developer under Section B.1 above.

4. **Choice of Law.** This Agreement shall be deemed to be a contract made under the laws of the State of Iowa and for all purposes shall be governed by and construed in accordance with laws of the State of Iowa.

The City and the Developer have caused this Agreement to be signed in their names and on their behalf by their duly authorized officers, all as of the day and date written above.

CITY OF NORWALK, IOWA

By: _____
Mayor

Attest:

City Clerk

O&A ENTERPRISE, LLC

By: _____

Its: _____

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

*Certain real property situated in the City of Norwalk, County of Warren,
State of Iowa bearing the Warren County Property Tax Identification
Parcel Numbers as follows:*

Tax Parcel ID #

63400130281

ASSESSMENT AGREEMENT

THIS AGREEMENT is dated as of the ____ day of _____, 2014, by and between the City of Norwalk, Iowa, (the "City") and O&A Enterprise, LLC (the "Developer").

WITNESSETH

WHEREAS, the Developer owns certain real property the legal description of which is contained in Exhibit A attached hereto (the "Development Property"), which is located in the City's Norwalk Urban Renewal Area; and

WHEREAS, a Development Agreement (the "Development Agreement") has been executed between the City and the Developer with respect to the construction of a new mortuary and floral shop on the Development Property (the "Project"); and

WHEREAS, the City has agreed to provide certain financial incentives to the Developer in connection with the development of the Project on the Development Property; and

WHEREAS, the City and the Developer have agreed that incremental property tax revenues to be derived from the Development Property will support the provision of financial incentives to the Developer; and

WHEREAS, the Assessor's records show the valuation for the Property and any related improvements as of January 1, 2014 to be \$_____; and

WHEREAS, pursuant to Section 403.6(19) of the Code of Iowa, the City and the Developer desire to establish a minimum assessed valuation for the Property and the Project to be constructed thereon, which shall be effective as of January 1, 2015 and from then until this Agreement is terminated pursuant to the terms herein;

NOW, THEREFORE, the parties to this Agreement, in consideration of the promises, covenants and agreements made by each other, do hereby agree as follows:

1. Effective January 1, 2015, the minimum assessed valuation which shall be assessed for the Property shall be Seven Hundred Fifty Thousand Dollars (\$750,000) until the termination of this Agreement, as hereinafter set forth.
2. The Developer hereby agrees that the assessed valuation (hereinafter referred to as the ("Minimum Actual Value")) set forth in Section 1 above shall become and remain effective as of the appointed date, and throughout the term of this Agreement, regardless of the actual degree of completion or incompleteness of the Project, even if construction of the Project is not commenced by such date. Furthermore, the Developer acknowledges that the City has changed its position in reliance on the timeliness of such increase in valuation for the repayment of the Bonds and the provision of the financial incentives set forth in the preamble hereof.
3. The Developer agrees to pay when due, all taxes and assessments, general or special, and all other charges whatsoever levied upon or assessed or placed against the Development Property, subject to any limitations set forth in the Development Agreement. The Developer further agrees that until this Agreement is terminated it will not seek administrative or judicial review of the applicability, enforceability, or constitutionality of this Agreement or the obligation to be taxed based upon the Minimum Actual Value or to raise any such argument by way of defense in any proceedings, including delinquent tax proceedings.
4. Nothing herein shall be deemed to waive the Developer's rights under Section 403.6(19) Code of Iowa, (2013) or otherwise, to contest that portion of any actual value assignment made by the Assessor in excess of the Minimum Actual Value.
5. This Agreement, and the Minimum Actual Value established herein, shall be effective through June 30, 2021.
6. This Agreement shall be promptly recorded with the Warren County Recorder, along with a copy of Iowa Code Section 403.6, and the Developer shall pay all costs associated with such recordation.
7. Neither the preambles nor provisions of this Agreement are intended to, nor shall they be construed as, modifying the terms of any other contract between the City and the Developer, including the Development Agreement. If there is any conflict between the terms of this Agreement and the Development Agreement, the terms of the Development Agreement shall control.

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

CITY OF NORWALK, IOWA

By _____
Mayor

Attest:

City Clerk

O&A ENTERPRISE, LLC

By: _____

STATE OF IOWA)

SS:

COUNTY OF WARREN)

On this _____ day of _____, 2014, before me the undersigned, a Notary Public in and for the said County and State, personally appeared Doug Pierce and Jeff Rosien, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Norwalk, Iowa, a municipal corporation organized in the State of Iowa executing the instrument to which this is attached; that said instrument was signed on behalf of the City of Norwalk, Iowa, by authority of its City Council; and that said Doug Pierce and Jeff Rosien, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

Notary Public

STATE OF IOWA)

COUNTY OF WARREN)

On this _____ day of _____, 2014, before me the undersigned, a Notary Public in and for the State of Iowa personally appeared _____, to me personally known, who, being duly sworn did say that he is a _____ of O&A Enterprise, LLC, the entity executing the instrument to which this certificate is attached; that said instrument was signed on behalf of said entity by authority of its governing body and that the said _____ acknowledges the execution of said instrument to be the voluntary act and deed of said entity, by it voluntarily executed.

Notary Public

CERTIFICATE OF THE WARREN COUNTY ASSESSOR

The undersigned Assessor, being legally responsible for the assessment of the above described property upon completion of the improvements to be made on it, certifies that the actual value assigned to such land and improvements upon completion shall not be less than Seven Hundred Thousand Fifty Dollars (\$750,000).

County Assessor for Warren County, Iowa

Subscribed and sworn to before me this _____ day of _____, 2014.

Notary Public